

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

B  
PryS

76-1101

---

**United States Court of Appeals  
For the Second Circuit**

---

UNITED STATES OF AMERICA,

*Appellee,*

-against-

CHARLES ROBERT THOMAS III, et al.,

*Appellant*

*On appeal from a Judgment of the United States  
District Court for the Eastern District of New York*

---

**Appellant's Appendix**

---

Lynne F. Stewart, Esq.  
SIEGEL & GRABER, ESQS.

*Attorneys for the Appellant Thomas*

100 Church Street — Suite 18

New York, New York 10017

(212) 962-1295

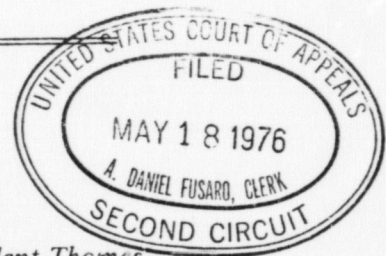


TABLE OF CONTENTS

	<u>Page</u>
Criminal Docket Entries . . . . .	A-F
Clerk's Certificate . . . . .	A-1
Minutes of Sentencing . . . . .	A-2
Notice of Motion . . . . .	A-19
Affidavit of Herman I. Graber . . . . .	A-20
Memorandum Rule 35 . . . . .	A-22
Memorandum and Order . . . . .	A-47
Bail Hearing . . . . .	A-49
Indictment . . . . .	A-59



ATTORNEYS

For II S#735.120 BEHAR

U3.

**For U. S.:**

ATTORNEY GENERAL

For Defendant: THOMAS

Stephen A. Russo - 600 3rd St

N.Y. N.Y. 986-2850

X ROBERT FORTUNA

MERLE ANN TAYLOR

conspire to  
overstolen m/v  
C.C.

~~LESLIE JOY~~

CASH REC

### ABSTRACT OF COSTS

AMOUNT

DATE \_\_\_\_\_

NAME \_\_\_\_\_

Time,	KORAL <sup>10014</sup> <sup>see</sup> <sup>repeated sheet</sup>	150000
-------	---	--------

1944	To Y <sup>1944</sup> per separate sheet	500	20
------	---	-----	----

6. 2nd, 044	Faktor 1/112	2000	10
-------------	--------------	------	----

Attorney,	separate sheet for Exhibits		
-----------	--------------------------------	--	--

Commissioner's Court,

Witnesses.			
------------	--	--	--

--	--	--

DATE \_\_\_\_\_

PROCEEDINGS

4-22-75 Before NEAHER, J - Indictment filed - ordered sealed by the Court

Bench Warrants ordered and issued for defts # 2, 3, 6, 7 & 8.

4-23-75 Before COSTANTINO J - case called - sealed indictment ordered.

opened - Defts & atty Mr. Nizin present - defts arraigned and

each deft enters a plea of not guilty (WM. AUGUST BARTH, BRUCE

BARTH & MERLE ANN TAYLOR) Bail set as to deft WILLIAM BARTH in the

sum of \$18,000 - 10% cash; debt BRUCE BARTH bail set at \$5,000.

P.R. bond and deft TAYLOR on O.R. Bond -all motions by 5-23-75.

4-23-75 By SCHIFFMAN, Magistrate - Order for acceptance of cash bail

filed (WM. AUGUST BARTH)

4/23/75	Petition for writ of habeas corpus ad prosequendum filed (WOLFE)
---------	--

4/23/75 By COSTANTINO, J.- Writ issued ret. 4/24/75

**BEST COPY AVAILABLE**

75CR 316

DATE	PROCEEDINGS
4-24-75	Before COSTANTINO J - case called - deft THOMAS III & atty present - Deft arraigned and enters a plea of not guilty - all motions by May 23, 1975. Bail set at \$5,000 P/R Bond - deft WOLFE present with attorney - deft arraigned and the court enters a plea of not guilty on his behalf - bail set <sup>at \$100.00-</sup> / case as to deft THOMAS III adjd to May 2, 1975 for all purposes.
5-25-75	Before COSTANTINO J - case called - deft FORTUNA present without atty - deft arraigned and the court enters a plea of not guilty on his behalf - all motions by May 23, 1975 - bail set at \$5,000 P.R.B. case adjd to May 2, 1975 at 10:00 am for all purposes.
6-30-75	Notice of appearance filed (BRUCE BARTH, TAYLOR)
6-30-75	By SCHIFFMAN, M. Order for Acceptance of Cash Bail (FINLEY) filed.
4-30-75	Before COSTANTINO J - case called - deft & counsel present - deft arraigned and enters plea of not guilty - bail set at \$2,500 -10% cash - bail limits extended to include the State of Vermont - case adjd to May 23, 1975 for motions and to set trial date. (FINLEY)
5-1-75	By COSTANTINO, J.- Order appointing counsel filed (WOLFE)
5-2-75	Notice of Appearance filed (FORTUNA)
5-7-75	Before COSTANTINO J - case called - deft HUNTER & atty Irving Anolik present - deft arraigned and enters a plea of not guilty - all motions by May 23, 1975 - Deft O.R. Bail limits extended to the State of Vermont.
5-8-75	Notice of appearance filed- (HUNTER)
5-12-75	Notice of Appearance filed (CHARLES ROBERT THOMAS III)
5-15-75	Notice of Motion filed, ret. May 23, 1975, for Bill of Particulars, suppression etc (deft HUNTER)
5-22-75	Notice of Motion filed, ret. May 23, 1975 for Bill of Particulars, inspection, dismissal (defts Bruce & Wm. August Barth)
5-21-75	Notice of Motion filed, ret. May 23, 1975, for Inspection, Bill of Particulars, etc. (deft THOMAS III)
5-23-75	Notice of motion for discovery, inspection, suppression and dismissal of indictment filed (FORTUNA)
5-28-75	Bench warrant retd and filed- executed (ANDON)
5-23-75	Before COSTANTINO J - case called - motion for an order for relief, argued and withdrawn (deft Thomas III) Defts HUNTER & FORTUNA motions for discovery and inspection - motions argued and withdrawn.
6-3-75	Notice of Motion filed, ret. July 1, 1975, for Discovery, Bill of Particulars, severance as to deft TAYLOR etc.
6-19-75	Govts Notice of Readiness for Trial filed
6-19-75	COSTANTINO J case called adjd to 6-20-75 for trial



## DOCKET

## PROCEEDINGS

6/27/75 75 M 701 inserted in CR file.

6/30/75 75 M 716 inserted in CR file.

6/30/75 75 M 699 inserted in CR file.

6/30/75 75 M 700 inserted in Cr file.

7/1/75 Before COSTANTINO, J. - Case called - Motion for discovery argued - grant-  
and denied as indicated on the record (TAYLOR)

7-24-75 Petition for Writ of Habeas Corpus Ad Prosequendum filed (BARTH)

7-24-75 By MISHLER, CH J - Writ Issued, ret. July 31, 1975 (BARTH)

7-28-75 Before COSTANTINO J - case called - deft KORAL & counsel  
Frank Harrison present - deft arraigned and having been  
advised of his rights and on his own behalf enters a plea of  
guilty to count 4 - sentence adjd without date.

7-30-75 75 M 1293 inserted in criminal folder.

7-31-75 Before COSTANTINO J - case called - defts WILLIAM A. BARTH  
AND LESLIE JOY present with attys - defts arraigned and having  
been advised of their rights and on their own behalf deft  
WM. BARTH enters a plea of guilty to counts 1, 2 & 3 and deft JOY  
enters a plea of guilty to count 4 - sentences adjd without date  
as to both defts - case as to deft BRUCE BARTH adjd to 9-29-75  
for all purposes.

8-4-75 Notice of Appearance filed (BARTH, WILLIAM)

8-4-75 Notice of Appearance filed (JOY)

8/6/75 75 M 1314 is inserted in CR file.

9-8-75 Petition for Writ of Habeas Corpus Ad Prosequendum filed (WOLFE)

9-8-75 By COSTANTINO J - Writ Issued, ret. 9-16-75 (WOLFE)

9-16-75 Before COSTANTINO J - case called - deft FORTUNA & counsel  
K. Salaway present - deft arraigned and having been advised  
of his rights and on his own behalf withdraws plea of not  
guilty and enters a plea of guilty to count one - deft Wolfe  
and counsel Murray Brill present - deft arraigned and having  
been advised of his rights and on his own behalf enters a  
plea of guilty to count 1 - sentences adjd without date as to  
both defts.

9-17-75 Before COSTANTINO J - case called - deft THOMAS III & atty  
Stephen Russo present - deft arraigned and after being advised  
of his rights and on his own behalf withdraws plea of not guilty  
and enters a plea of guilty to counts 1 and 3 to 7 - sentence  
adjd without date - deft -----

## PROCEEDINGS

1/17/75 Notice of appearance filed (THOMAS)

9-19-75 Writ ret'd and filed - Executed (WOLFE)

9-29-75 Before COSTANTINO J - case called - deft ~~BRUCE BARTH~~ & counsel Allan Sturim present - deft arraigned and having been advised of his rights and on his own behalf enters a plea of guilty to count 12 - sentence adj'd without date - bail continued.

10-2-75 Before COSTANTINO J - case called - deft Koral & counsel F. Harrison present - deft sentenced to imprisonment for 2 years - execution of sentence is suspended and the deft is placed on probation for a period of 3 years and to pay a fine of \$1,500 as set forth by Probation Dept.

10-2-75 Judgment and Order of Probation filed - certified copies to Probation

10-3-75 Before COSTANTINO J - case called - defts JOY, BARTH & FINDLEY

present with attys - deft Joy sentenced to 2 years imprisonment on count

4. Imposition of sentence is suspended and deft is placed on probation for 3 years and to pay a fine of \$500 as set forth by Probation Dept.

Special condition is that the deft seek psychiatric treatment. Deft

~~WILLIAM AUGUST~~ BARTH sentenced on each of counts 1, 2 & 3 to 3 years imprisonment to

run concurrently with ~~State of Tennessee~~ and 3 years probation in

this District. Deft to visit psychiatrist or probation will be revoked.

Deft FINLEY having been advised of his rights by the court and on his own behalf withdraws plea of guilty and enters a plea of guilty to count 22 - sentence adj'd without date - bail cont'd.

10-3-75 Judgment & Order of probation filed for deft JOY - certified copies to probation. Judgment and Commitment and Order of probation filed as to deft BARTH - certified copies to Probation & Marshal.

10-29-75 Petition for Writ of Habeas Corpus Ad Prosequendum filed (Wolfe)

10-29-75 Writ Issued (Wolfe)

10-31-75 Before COSTANTINO J - case called - sentence as to deft Wolfe adj'd to Nov. 14, 1975. Deft FORTUNA & atty Kenneth Saloway present - Deft sentenced to imprisonment for 4 years. Execution of sentence is suspended and the deft is placed on probation for 5 years and to pay a fine of \$2,000 to be paid within 18 months., on condition that pay the fine from his own pocket. Probation will be revoked if deft receives help from his parents. On motion of AUSA Johnson counts 16 and 17 are dismissed.

11-1-75 Judgment & Order of probation filed - certified copies to Probation (FORTUNA)

11-1-75 Judgment & Commitment ret'd and filed - ~~sent~~ copies of Judgment re ~~sent~~ Wm. August Barth delivered



10 0 11

E

FINAL DOCKET

DATE	PROCEEDINGS
11/7/75	Before COSTANTINO, J.- Case called- sentence adjd to 11/24/75 (THOMAS)
11-14-75	Before COSTANTINO J - case called - Deft Wolfe & atty Maurice Brill present - deft sentenced for a period of 2 years pursuant to 18:4208(a)(2) to run consecutively with state term - On motion of AUSA Johnson counts 2 and 18 are dismissed. Deft Taylor & atty Mark Heller., present. On motion of AUSA Johnson the indictment is dismissed as to deft Taylor. Deft BRUCE F. BARTH & atty Allan Sturim present - deft sentenced to imprisonment for 3 years. Execution of sentence is suspended and the deft is placed on probation for 3 years. On motion of AUSA Johnson counts 1, 11, 13, 14 & 15 are dismissed. Deft FINLEY & atty Matthew Chess present - deft sentenced to imprisonment for 3 years. Execution of sentence is suspended and the deft is placed on probation for 3 years. On motion of AUSA Johnson counts 1 and 30 are dismissed.
11-14-75	By COSTANTINO J - Order of dismissal filed (Taylor)
11-14-75	Judgment and Order of Probation filed for defts. BRUCE BARTH, ROY ROBERT WOLFE & EDWARD JARAMILLO.
11-17-75	Voucher for compensation of counsel filed (deft Wolfe-counsel Maurice Brill)
11-20-75	Writ ret'd and filed - Executed (deft Wolfe)
11-21-75	Before COSTANTINO J - case called - deft Thomas & counsel S. Russo present - Deft sentenced to 3 years imprisonment pursuant to 18:4208(a)(2) to run concurrently on each count - On motion of AUSA Johnson counts 8 through 29 are dismissed. Stay of execution granted to Dec. 1, 1975 at 4:00 PM.
11-21-75	Judgment and Commitment filed - certified copies to Marshal (THOMAS)
11/28/75	Notice of motion to extend date of surrender - ret. 12/1/75 (THOMAS)
12-1-75	Before COSTANTINO J - case called - deft Charles Thomas III present with atty S. Russo - motion to stay execution of sentence argued - execution stayed until Jan. 5, 1976 at 4:00 PM.
12/3/75	Stenographers Transcript dated 11/24/75
12/31/75	Notice of motion to reduce or vacate sentence and memorandum of law & ret. 1/2/75 (THOMAS)
1/5/76	Before COSTANTINO, J.- Case called- deft and counsel present- decision reserved on motion to reduce sentence (THOMAS)

F

PROCEEDINGS

12-20-11

-19-76 Before COSTANTINO J - case called - deft Hunter & counsel Irving Anolik present - deft withdraws plea of not guilty and after being advised of his rights and on his own behalf enters a plea of guilty to count 21 - sentence adjd without date - bail contd.

X  
2-19-76 By COSTANTINO J -Memorandum and Order filed denying motion for reduction of sentence (Charles Robert Thomas) Petitioner is directed to present himself in this courthouse in the Marshals office on 2-23-76 by 3:00 PM to begin serving his sentence. No further delay will be granted.

2/24/76 By COSTANTINO, J.- Memorandum and Order filed that memorandum and order dated 2/19/76 is modified to the extent that petitioner shall present himself at the Marshal's office by 3:00 P.M. on 2/27/76

2/27/76 Notice of appeal from order denying motion to reduce sentence filed (THOMAS)

2/27/76 Docket entries and duplicate of notice of appeal mailed to court of appeal

3-1-76 Before COSTANTINO J - case called - deft Charles Robert Thomas & counsel present - oral motion to set bail pending appeal of Rule 35 motion argued and motion denied - deft to commence his 3 year sentence on 3-1-76 at 10:30 am.

3/5/76 Certified copy of Judgment and Commitment ret'd and filed- deft delivered to MCC(THOMAS)

3/5/76 Notice of motion to reduce sentence filed ret. 3/12/76 (WOLFE)

3-5-76 Stenographer's transcript dtd 3-1-76 filed.

3/6/76 Record on appeal certified and mailed to court of appeals

A TRUE COPY

DATE 3/8/76

BY *[Signature]*



## CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

65  
Charles Robert Thomas

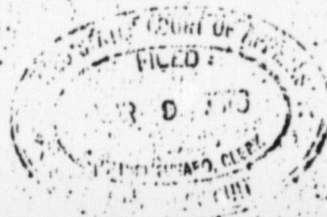
75436

I, LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing copy of the Docket Entries from A to E and the original papers numbered from page 1 to 11 constitute the Record of Appeal.

I further testify that the last day to file said record is \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be hereunto affixed, at the Borough of Brooklyn in the Eastern District of New York, this 8 day of March in the year of our LORD, One Thousand Nine Hundred and 76 and of the Independence of the United States

and XXXXXX



By:

CLERK

DEPUTY CLERK

Recd 3/17/76

## MINUTES OF SENTENCING

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

75-CR-316

CHARLES ROBERT THOMAS III, :  
a/k/a WILLIAM LAWLER, :  
"BOB" THOMAS and :  
RICHARD SAXON, :

Defendant. :

-----X

United States Courthouse  
Brooklyn, New York

November 24, 1975  
10:00 o'clock a.m.

Before :

HON. MARK A. COSTANTINO,

U.S.D.J.

\* \* \*

GENE RUDOLPH  
OFFICIAL COURT REPORTER



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A p p e a r a n c e s :

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York

By: HERBERT G. JOHNSON  
Assistant United States Attorney

STEVEN RUSSO, ESQ.  
Attorney for Defendant

\* \* \*

1 THE CLERK: Criminal cause for  
2 sentence, U.S.A. versus Charles Robert Thomas.

3 THE COURT: All right.

4 MR. JOHNSON: Is Mr. Russo here?

5 THE COURT: Is your lawyer here?

6 THE DEFENDANT: He's not here, sir.

7 THE COURT: Who is your lawyer?

8 THE DEFENDANT: Steven Russo.

9 THE COURT: Steven Russo?

10 THE DEFENDANT: Russo. He's supposed  
11 to be here.

12 THE COURT: It is for sentencing?

13 MR. JOHNSON: Yes, your Honor.

14 THE COURT: Second call.

15 MR. JOHNSON: Thank you.

16  
17  
18 (Second call.)

19 THE CLERK: Second call, criminal cause for  
20 sentence, U.S.A. versus Charles Robert Thomas and  
21 Richard Saxon.

22 MR. RUSSO: Your Honor, unbeknownst to me,  
23 I didn't know what the Court's policy is about the  
24 availability of the probation report. May I request  
25 a brief - -



1 THE COURT: It has been published in the  
2 Law Journal for two weeks now.

3 MR. RUSSO: I understand that, your Honor.  
4 I have not had occasion to - -

5 THE COURT: I will permit you to look at it  
6 this morning, but under no circumstances will any  
7 other attorney ever see it again on the day of sentence.

8 MR. RUSSO: Fine. Thank you very much, your  
9 Honor.

10 THE COURT: All right.

11 MR. JOHNSON: I think Richard Saxon is an  
12 a/k/a in this case. So it's not - - it's not two  
13 separate people.

14 THE COURT: One person, right.

15 (Short recess taken.)

16 THE CLERK: For sentence, U.S.A. versus  
17 Charles Robert Thomas.

18 THE COURT: All right.

19 MR. RUSSO: Your Honor, may I hand this letter  
20 up to the Court? I just received it this morning.

21 THE COURT: All right.

22 MR. RUSSO: Your Honor, during the course of  
23 the past several weeks, I have submitted various  
24 letters to the Court on behalf of Mr. Thomas.

25 I think the common strain that goes through

1 all of these letters, and in fact the probation  
2 report, with several exceptions, is the fact that  
3 the man who now stands before you is a vastly  
4 different individual than the individual who is  
5 charged with having committed a series of crimes  
6 between 1970 and 1973.

7 What was formerly in essence a con man,  
8 your Honor, as borne out by the many incidents that  
9 he was involved in, a person who had repeatedly been  
10 involved in anti-social behavior, I believe is borne  
11 out right now as being an individual who is a vastly  
12 changed person, a person who has assumed the  
13 responsibilities of a family, has led a very productive  
14 life since he's been released from prison, has been  
15 principal in two very recent but growing business  
16 ventures, a floor sanding service and a fish market  
17 in the community of East Hampton, and I think he's  
18 shown himself, your Honor, to be a hard working  
19 individual, who has learned from the lesson of having  
20 been incarcerated for a somewhat related incident  
21 back in 1973 to '74.

22 Your Honor, I would like to comment about  
23 that situation in 1973 and it isn't adequately  
24 reflected in the probation report, but three New  
25 York State judges conducted some extensive conferences



1 regarding the proper disposition of Mr. Thomas'  
2 matters, and the three of them, Justice Lang of the  
3 New York Supreme Court, Justice Leonard Sandler of  
4 the Supreme Court and Justice Lawrence Teinetti of  
5 the Bronx Supreme Court conducted extensive  
6 correspondence and communications with each other  
7 and agreed among them to accord this defendant an  
8 opportunity to give him a break, in essence, and  
9 that is the three of them agreed to impose a  
10 concurrent one year sentence on three separate and  
11 distinct matters.

12 Mr. Thomas was incarcerated, your Honor, for  
13 a period of - - he received a one-year sentence. He  
14 served approximately seven months, and I think it's  
15 since that time, your Honor, that things have started  
16 happening, because, to call it bluntly, Bobbie Thomas  
17 did not like prison, and I think he learned something,  
18 your Honor.

19 He learned that he would have to mend his  
20 ways. I think he learned that he would have to  
21 become a productive person. I think he learned that  
22 he would have to do things for himself, rather than  
23 be oriented as the probation report says by the  
24 quest of a fast buck.

25 Your Honor, in the probation report several

1 comments are made and I just would like to refer to  
2 them.

3 First of all, it indicated that Mr. Thomas - -

4 THE COURT: What page? Tell me the page.

5 MR. RUSSO: Well, throughout the probation  
6 report, your Honor. I - - in the summary section  
7 and in the initial portion of it, your Honor, I just  
8 would state that there are various references to the  
9 fact that Mr. Thomas was not cooperative with the  
10 investigation. I think the Court recalls that.

11 I could state this as an officer of the  
12 court, your Honor, that from the date that I came  
13 into this case and when I spoke with Mr. Behar, who  
14 was originally assigned to the matter, Mr. Behar  
15 indicated that he was not interested in Mr. Thomas'  
16 cooperation because I explored that, your Honor, as  
17 an attorney must, to determine what course of action  
18 had to be taken, and Mr. Behar indicated that he did  
19 not want to speak to Bobbie Thomas. He did not want  
20 to find out anything about what he knew about this  
21 situation.

22 Your Honor, I would state another thing,  
23 that from the day the defendant walked into my  
24 office it was his intention to enter a plea to the  
25 charges, and it's only because of my intervention



1 and the responsibility I had to examine the  
2 Government's case that any plea in this situation  
3 was deferred.

4 But I will state this, your Honor, that the  
5 defendant from the first day in this situation has  
6 indicated that he wanted to enter a plea to this  
7 situation. He wanted to clean up his past.

8 I think, your Honor, we are dealing with a  
9 situation that has some cobwebs attached to it in  
10 that it's a three to five-year-old incident. The  
11 defendant was sentenced to prison on a subsequent  
12 matter, your Honor, and he has served his time, and  
13 I am not saying that the time that he served covers  
14 this situation, but what I am saying, your Honor, is  
15 that it was time that was served for a related  
16 situation.

17 It was time that was served by this defendant  
18 and it was time from which this defendant learned.  
19 He learned the error of his ways, and I think he  
20 learned that he has responsibilities to meet.

21 Your Honor, I don't want to get caught up  
22 in stock phrases. The phrases, the notations that  
23 are often made about rehabilitation being the  
24 principal purpose of any penal system. But, your  
25

1 Honor, I think if there is any stock to be given to  
2 those basic doctrines, I think what we have before  
3 us now is a man who has substantially mended his ways.  
4 He has become productive. He has assumed responsibi-  
5 lities.

6 I think the letters that have been submitted,  
7 your Honor, attest to the fact that Mr. Thomas is not  
8 only a devoted family man but he's a respected member  
9 of his community in East Hampton and the people there  
10 like him. The people there trust him. The people  
11 there ask him to do things for them.

12 Your Honor, I just think that throwing the  
13 key away on an individual like this would be to negate  
14 all that has been done in the past couple of years,  
15 all that has been done by this defendant himself, all  
16 that has been done by this defendant who has learned,  
17 I think, from a very unpleasant experience.

18 Your Honor, perhaps the matter could best be  
19 stated by the defendant himself, who does request  
20 permission to address the Court in his behalf.

21 THE COURT: He has an absolute right. I told  
22 him that at the time he pled guilty. He has an  
23 absolute right to tell the Court what he wishes to  
24 tell the Court with reference to any mitigating  
25 circumstances in his behalf.



1                   You may do so now, Mr. Thomas.

2                   THE DEFENDANT: There are only two points  
3 I'd like to make, Judge.

4                   Number one, three judges, Judges Sandler,  
5 Teinetti and Lang did take an interest in me at the  
6 particular time I was before them, that I was  
7 appearing before them, and that after I entered  
8 Rikers Island, I wrote letters to Judges Lang and  
9 Sandler thanking them for their consideration and  
10 explained to them that I was going to do the best I  
11 could when I got out of jail.

12                   No point has been mentioned here of the fact  
13 that when I served my time, I took a year supervision.  
14 I took a year's parole in lieu of three-and-a-half  
15 months more of jail time, just because I knew one of  
16 the things I did know is that this indictment was  
17 forthcoming and I wanted to prove to myself and to - -  
18 and to your Honor and to the other people around me  
19 that I could function successfully under supervision,  
20 and I think I've done that.

21                   I've successfully completed a year's parole.  
22 I served time in jail for a related incident, and the  
23 only thing I could say is that I don't want to go  
24 back to jail, Judge.

25                   THE COURT: Does anyone else have anything to

1 say?

2 THE DEFENDANT: I could -- these are the two  
3 letters that I wrote to Judge Lang and Judge Sandler.

4 Judge Sandler, as a matter of fact,  
5 originally sentenced me to three years and he --  
6 he re-sentenced me to a concurrent one year term.

7 MR. RUSSO: That was after discussion, your  
8 Honor, with the --

9 THE DEFENDANT: That was after the discussion.

10 MR. RUSSO: -- with the other two judges.

11 THE DEFENDANT: I originally got a three-  
12 year sentence.

13 I think I've done everything I could to  
14 live up to the consideration the judges have shown me.

15 THE COURT: All right.

16 MR. JOHNSON: Your Honor, if I may be heard  
17 just briefly?

18 THE COURT: Yes.

19 MR. JOHNSON: This, of course, as your Honor  
20 realizes, is Mr. Behar's case.

21 THE COURT: Yes.

22 MR. JOHNSON: He handled it from its inception  
23 until he left the United States Attorney's Office.

24 I spoke with him on the phone before coming  
25 to court today, to inquire as to any discussions had



1 with respect to any recommendation the government  
2 would make, and I am following his intention and I  
3 agree with it, that the Government will make no  
4 recommendation whatsoever with respect to sentencing.  
5 That is left to the Court's prerogative.

6 I just think maybe, perhaps, though, I  
7 should just comment to respond to the question of  
8 discussions of cooperation.

9 Any that - - that did not occur in this case  
10 and the reasons for them, obviously, and your Honor  
11 is well aware, this defendant was the central figure  
12 in this case, named in 28 of the 30 counts, and it  
13 would, of course - - it would be normal in such a  
14 situation that he would not be the person with whom  
15 the cooperation would be sought in fact.

16 That is all I have to say to it, your Honor.

17 MR. RUSSO: Your Honor, just a further comment  
18 on that point, and that is, when I spoke with Mr.  
19 Behar initially about this, about the aspect of  
20 cooperation, while he indicated that he was not  
21 interested in Mr. Thomas' cooperation, I also said  
22 "Well, would you be interested in speaking with him?  
23 About perhaps background information, about the  
24 situation," since Mr. Thomas had made up his mind  
25 that he wished to enter a plea to the situation.

1                   And I again -- your Honor, I just wish to  
2                   express, Mr. Behar said that he was not even  
3                   interested in speaking with him.

4                   THE COURT: It has been explained. He is a  
5                   central figure and the others that were indicted  
6                   with him, in the other counts, of course some of  
7                   them had - - were really brought in under circum-  
8                   stances that would probably never have been involved  
9                   in a ring of this type. The Court recognizes that  
10                  in some of the sentences and that is the reason for  
11                  the sentences meted out to them.

12                  He stands in a different light. He stands  
13                  in the same light almost as Mr. Barth stood in the  
14                  situation involving this ring of taking these  
15                  automobiles. It was a big ring. If they hadn't  
16                  been caught, I do not think there would have been a  
17                  Mercedes-Benz - - there would have been a Porsche  
18                  left in the whole City of New York.

19                  As I said prior, in the prior sentencing, I  
20                  never knew there were so many Porsches in the City  
21                  of New York, but evidently somebody knew they were.

22                  He was involved in a very, very heavy,  
23                  serious ring of taking a very, very expensive  
24                  automobile and knowing exactly what to do with it.

25                  MR. RUSSO: Judge, I don't think he's trying



1 to pass the buck on that.

2 THE COURT: I know he is ~~not~~ passing the buck.  
3 Of course not.

4 MR. RUSSO: He readily acknowledges that.

5 THE COURT: I can understand his statement  
6 and his wishes to have this Court be as reasonable  
7 and understanding under the circumstances. If I  
8 were anything other than that, I would be not fair  
9 with myself.

10 I can also understand, however, the serious-  
11 ness of the charges that have been made against you,  
12 the seriousness of the charge to which you pled  
13 guilty.

14 I understand that your statement of being  
15 rehabilitated, you may never do it again, may be  
16 honestly made to this Court, but the Court has to  
17 weigh all of the equities involved, not only your  
18 own equity but the equity of the Government, of the  
19 people, the community, the attitude of the defendant,  
20 the attitude of the lawyer, the statements made,  
21 what mitigates in your favor. All of these things  
22 are being taken into consideration, not just upon  
23 the probation report itself.

24 I must come to an honest and fair conclusion.  
25 I must do what I think justice requires under the

1 circumstances.

2 THE DEFENDANT: I understand.

3 THE COURT: That is what I am going to do.  
4 I may feel very well that he has some very good  
5 traits. He hasn't demonstrated them up to this point.

6 Carrying loaded guns is not what I'd call  
7 the epitome of excellent citizenship. You do not  
8 get - - as I always keep saying, you do not get the  
9 Silver Beaver for that. That is the high boy scout  
10 award for adults.

11 THE DEFENDANT: Judge - -

12 THE COURT: Did you want to say something?  
13 Talk.

14 THE DEFENDANT: The only thing I could say is  
15 that this stuff happened years ago. It did not  
16 happen since I went to jail. I came out of jail.  
17 Once again, I served a year's parole. I successfully  
18 completed that year's - - year on parole.

19 I've started two businesses. The people - -

20 THE COURT: You made a nice profit on the  
21 illegality of the situation you were involved in.

22 THE DEFENDANT: I understand that, Judge.  
23 I do understand that.

24 The only thing I could say is that it  
25 happened, as far as I'm concerned, a long time ago,

BEST COPY AVAILABLE



1 over two years ago. The last crime was committed,  
2 and since that time I've done everything I could to  
3 straighten myself out, including serve time.

4 THE COURT: All right.

5 Anything else from anyone?

6 MR. JOHNSON: Nothing.

7 THE COURT: No? All right.

8 He has been charged with six counts, the  
9 maximum of which is a \$10,000 fine or five years in  
10 jail.

11 This Court sentences him to three years in  
12 jail, concurrent on all counts. That is the Court's  
13 sentence.

14 All right.

15 MR. RUSSO: Your Honor, is it possible to  
16 defer execution of the sentence until after the  
17 holidays?

18 THE COURT: Excuse me?

19 MR. RUSSO: Would it be possible to defer  
20 execution of the sentence until after the holidays?

21 THE COURT: I will defer it until after  
22 Thanksgiving. Not after that.

23 Report on Monday, 4:00 o'clock, to the  
24 Marshal's Office.

25 THE DEFENDANT: Fine.

1 THE COURT: You see, it is not a question  
2 of how much faith I have in you. It is a question  
3 that even as a human being you are entitled to an  
4 understanding from a court.

5 The question is whether you are going to  
6 reciprocate that understanding.

7 THE DEFENDANT: I think I've shown it all the  
8 way, Judge.

9 THE COURT: All right.

10 MR. JOHNSON: Your Honor, the bail will be  
11 continued during the time until he - -

12 THE COURT: Bail continued until Monday,  
13 4:00 o'clock. 4:00 o'clock Monday.

14 MR. JOHNSON: December 1, 1975.

15 THE DEFENDANT: Thank you.

16 MR. JOHNSON: Your Honor, the Government, in  
17 light of the sentence imposed by the Court here,  
18 under Counts One and Three through Seven, would like  
19 to move that Counts Eight through Twenty-nine  
20 inclusive of the Indictment, which are the remaining  
21 counts in Indictment 75-CR-316 in which the defendant  
22 is named be dismissed.

23 THE COURT: Dismissed.

24 MR. JOHNSON: Thank you.

25 \* \* \*



NOTICE OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK x

UNITED STATES OF AMERICA.

-against-

CHARLES ROBERT THOMAS, et al.,  
Defendants. x

NOTICE OF MOTION

75 CR 316

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of HERMAN I. GRABER, duly sworn, and upon all the proceedings heretofore had herein, the undersigned will move this Court at the United States Courthouse for the Eastern District of New York, located at Cadman Plaza, at 9:30 o'clock or as soon thereafter as counsel can be heard on the 2nd day of January, 1976, for an order vacating the sentence imposed on November 24, 1975, and placing Charles Robert Thomas on probation; or, modifying and reducing the sentence.

Alternatively, we respectfully request that an evidentiary hearing be held in order to decide factual matters in dispute and for the Court to evaluate, under oath, witnesses presented in Mr. Thomas' behalf.

WHEREFORE, the defendant requests that the motion be granted, a hearing be held and for such other relief as may appear just and proper.

Dated: New York, New York  
December 29, 1975

Yours, etc.,

SIEGEL & GRABER, ESQS.  
Attorneys for Defendant  
Charles Robert Thomas  
100 Church Street, 18th Floor  
New York, New York 10007  
(212) 962-1295

## AFFIDAVIT OF HERMAN I. GRABER

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF NEW YORK x

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

CHARLES ROBERT THOMAS, et al.,  
 Defendants.

75 CR 116

STATE OF NEW YORK )  
 COUNTY OF NEW YORK ) ss.:

HERMAN I. GRABER, being duly sworn, deposes and says:

That he is the attorney for the defendant CHARLES ROBERT THOMAS, herein.

That Mr. Thomas was sentenced to a term of three years imprisonment on November 24, 1975, by the Hon. Marc A. Constantino, for his participation in a stolen car ring during the years 1971-1973. The time for his surrender was stayed until January 5, 1976.

The crucial facts upon which this Rule 35 motion for leniency is based are:

1. The gaps and unsubstantiated allegations in the probation report;
2. The derogatory tone of the probation report;
3. The rehabilitative efforts made by CHARLES ROBERT THOMAS since his incarceration by the State in 1974, his successes and the projected human toll which would be occasioned by execution of this sentence..

This man, CHARLES ROBERT THOMAS, has been with me for extensive interviewing. I have been struck by his sincerity and candor. All too often in criminal work, we portray our clients at time of sentencing as "rehabilitated". So hackneyed and trite has become



this practice that when a Robert Thomas comes along, the phrase, which truly applies in his case, is so jaundiced as to be heard only skeptically by an experienced sentencing judge.

However, the truth cannot be gainsaid. This is truly a man who perceived the errors of his earlier years and has arisen from the ashes of his former dissolute and anti-social life, like the Phoenix to <sup>become</sup> a positive force for good within his own community. So strongly is the feeling on behalf of Robert Thomas, that numerous friends, relatives, neighbors, and business associates have volunteered to appear in Court, if it will "help". This community outpouring of support and belief in a person is unique to my experience.

Robert Thomas is 37 years old. Another three years in jail may be so discouraging as to put him beyond the pale. This seems tragically unnecessary when he has the potential enterprise and enjoys the neighborly support necessary to provide for his wife and the seven children who depend upon him financially and emotionally. He has a contribution to make to this society. He has said to me "There is no force upon heaven or earth that could make me do something that would put me on the inside again." He does not need three years or even three months to effect his rehabilitation. That process is already underway. Interruption of it may serve the short range purposes of community deterrence or retribution -- we submit that the price is too high.

WHEREFORE, I request that the relief sought herein be in all respects granted.

Sworn to before me this  
30th day of December, 1975

NOTARY PUBLIC

*Herman I. Graber*  
HERMAN I. GRABER

MEMORANDUM RULE 35

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK x

UNITED STATES OF AMERICA

-against-

, 75 CR 316

CHARLES ROBERT THOMAS, et al.,

Defendants.

x

DEFENDANT'S MEMORANDUM IN SUPPORT OF  
A REDUCTION OF SENTENCE

HERMAN I. GRABER, ESQ.  
LYNNE F. STEWART, ESQ.  
SIEGEL & GRABER, ESQS.  
Attorneys for Defendant  
Charles Robert Thomas  
100 Church St., 18th Flr.  
New York, New York 10007  
(212) 962-1295



INTRODUCTION

When Sydney Carton mounted the steps of the guillotine to meet the death ordered for Charles Darney in Dickens' Tale of Two Cities, we have an immortal moment in literature. The notion of an innocent twin taking the supreme punishment for another man excites all of the finest human instincts of justice and mercy.

In the instant case, Charles Robert Thomas is not such an innocent. He committed the crimes for which he is now before the Court. And yet, it is as if he is now playing Sydney Carton to his own Charles Darney. For he has so reformed his life since 1974 that it is as if there are two men up for sentencing. The 1960's Charles Robert Thomas who brawled in East Side bars, "jet setted" around and stole expensive cars is, to all intents and purposes, dead. The sober, hardworking and responsible man who has built a new and productive life is the person receiving the sentence.

If we, as a society, have rejected the notion that for every anti-social act there must be retribution, then it must be apparant that the efforts by this man to re-order his life after an initial incarceration by the State of New York place him in perhaps a unique category.

The belief no longer prevails that every offence in a like legal category calls for an identical punishment, without regard to the past life and habits of a particularized offender.

Williams v. New York, 337 U.S. 241,  
247, 69 S.Ct. 1079, 93 L.Ed. 1337  
(1949)A

This is a situation which calls for an innovative and creative sentencing response on the part of the Court. If, as Sir Edmond Coke said in the 16th Century, reason is the life of the law, then it behooves us all to work out a solution in this case, which is reasonable to the defendant, the many people who depend upon him, and the society at large.



## I.

THE GAPS AND UNSUBSTANTIATED  
ALLEGATIONS IN THE PROBATION REPORT.

After a thorough reading of the Probation Report, in the Judge's chambers, it was apparant that certain important items were not included by the investigator. Primarily, this deals with the defendant's sentencing and parole in the State Court.

We make no argument that Mr. Thomas did not separately offend against the federal Government. However, we do believe it is possible that at time of sentencing before J. Sandler, and Lang, of the New York Supreme Court that the informational basis upon which they may have relied was of wider involvement than the one charge upon which he was apprehended. Unfortunately, while this state pre-sentence report would have been available to the Federal probation investigators and is still amenable to Court-ordered perusal they did not choose to avail themselves of it.

More crucial perhaps is the fact that Mr. Thomas served a year of voluntary parole. The state parole officer, while undoubtedly overworked, should have been the most fertile source to consult for insight into the rehabilitative potential as exhibited by Mr. Thomas. We are not dealing here with any crimes committed after state incarceration. His rehabilitation is ongoing.

Thus, it would appear that one of the questions uppermost in anyone's mind concerning Robert Thomas must be whether or not another term of incarceration can serve any purpose. It would similarly appear that one of the persons best qualified to know, his state parole officer, was never consulted. Thus the Court was never presented with a complete picture of the man before it.

Insofar as the unsubstantiated allegations are concerned the report is replete with them. For example, on pages 5-6, the details of the criminal enterprise portray Robert Thomas as one of "two central figures"\* in a car theft ring involving two hundred (200) Porsches. Yet specifically, they go on to say that he was involved with only twenty-seven (27). This does not appear to be a ring leader. Nor does his alleged role of "doing the paper work" seem to make him central in a group that stole cars, changed VIN numbers, re-registered the vehicles, arranged for the sale of the cars and transported them interstate for delivery.

The report goes on to say that Robert Thomas received "far in excess" of the \$20,000.00 he claimed he got in profit. There is no substantiation for this beyond the fact that the FBI so claims.

One small additional item refuted at time of sentencing deserves to be brought to the Court's attention. This concerns Thomas' readiness to co-operate with law enforcement officials. As was stated in United States v. Malcolm, 432 F.2d 809 (2 Cir. 1970), there can be no question that a defendant's co-operation with law enforcement officials "is highly material to mitigation of punishment". At time of sentencing, Charles Robert Thomas'

---

\* It may be appropriate to mention at this point that co-defendant Barth, the other alleged "leader" received a three year sentence - concurrent with a term he is serving now on another crime. His past record and rehabilitative potential are unknown to us, but it does appear that Charles Robert Thomas received the heaviest sentence of the group.



attorney attempted to explain that co-operation offered, had been refused by the Assistant United States Attorney in charge of the case (p. 11-12, Sentencing Transcript). Although the man had left the office by time of sentencing, it seems abhorrent and irresponsible that the Probation Office should have included in the pre-sentence report that Thomas refused to co-operate "now or in the future" when there was no basis in fact for such information.

Wherefore, we respectfully request that the Court use its power to supply the missing gaps of information and ignore all allegations in the pre-sentence report that are unsubstantiated by evidence or even by common sense.

## II.

THE DEROGATORY TONE OF THE PROBATION  
REPORT PREJUDICED THE DEFENDANT.

There is a nuance to words that is akin to music. A certain word can stir a certain emotion while another word, meaning almost the same strikes the ear with a different mood. The language of the report seems near to schizophrenic in that it is at times sympathetic and at other times crass with disbelief.

Submitted as an appendix to this memorandum is a probation evaluation submitted in support of this motion. It clearly shows that while the Probation Office attempts to present an objective report - there are very often many different ways of perceiving the truth.

Not to belabor the point, we should like to quote in full the last paragraph of the last page, the evaluative summary:

Agents regard the defendant as one of the two most culpable individuals in this cleverly designed and well run operation. It is apparant that the defendant, who was considered as very proficient in altering automobile registration became involved in the instant offense, as he states, "for excitement and money". Such carefree and irresponsible actions clearly demonstrate his anti-social mode of behavior, which poses a serious threat to the well being of any community.

(Page 24, Probation Report)

We believe this statement borders on the irresponsible. To fail to mention the endeavors by this person since the time of his anti-social behavior and to equate the Robert Thomas of 1971-1973 with the Robert Thomas of today is truly a great and unreasonable injustice.



## III.

THE REHABILITATIVE EFFORTS AND SUCCESSES  
OF CHARLES ROBERT THOMAS PRECLUDE THE  
THE NECESSITY FOR A SUSTAINED PERIOD OF INCARCERATION.

Charles Robert Thomas is, we believe, that person for whom a taste of jail was enough to forever discourage anti-social criminal tendencies. Deterrence worked. He came out ready to start again. There is no need to reiterate what he has accomplished. What we should like to direct the Court's attention to is what he has attempted and what a period of long incarceration would mean to the people with whom he is now associated.

Most importantly, Robert Thomas has started two small businesses in the Hamptons. Only a small entrepreneur can know the trauma and backbreaking energy that must be expended at the outset of the enterprise in order to build enough to insure one's living. In this case Robert Thomas has given greatly of himself. His business practices have earned him the devotion of the rough-hewn, earth and sea-tied people of Eastern Long Island. Such people are willing, if the Court should so desire, to testify as to their belief that not only is "Bob" Thomas no "threat" to the community, but that he is a positive force for good and one that would be sorely missed.

Also, there are so many innocent persons with whom he has family ties who would suffer should he be incarcerated. There are his children by a prior marriage. His ex-wife, Marie O'Connell Thomas would be willing, should the Court so desire, to testify in Charles Robert Thomas' behalf. Their four children enjoy at this point a measure of fatherly devotion they can only

receive from him, and he has been responsible and responsive to them. Also, there are the three children of his present wife who also have come to depend upon him financially and emotionally. His wife cannot assume indefinitely the 3:30 A.M. trips to the Fulton Fish market that would support herself and the children. If Charles Robert Thomas goes to jail for a lengthy period, this family goes into financial and emotional limbo.

In closing, we believe that this is a unique case where a man's debt to society has fallen due on an installment basis. We can only ask the Court to temper justice with mercy and forbear collection on this final installment, unless Charles Robert Thomas' attempt to rehabilitate himself is undone. Alternatively, if there is no recourse, we ask that a minimal time of incarceration be ordered at a facility in which he might be able to resume his livelihood in May, when the season begins on Eastern Long Island. For the good of society, we believe Charles Robert Thomas has begun to capitalize on those positive attributes in his personality and that the anti-social side of him was buried in prison. This humanization should not be impeded.

Respectfully submitted,

SIEGEL & GRABER, ESQ.  
Attorneys for Defendant Thomas  
100 Church Street, 18th Floor  
New York, New York 10007  
(212) 962-1295



My client was sentenced by Your Honor to three years imprisonment after pleading guilty to conspiracy and transport in interstate commerce of stolen motor vehicles.

We submit the following information as an aid to the Court in its determining as to whether or not a reduction of sentence should be granted.

**PERSONAL HISTORY:**

Robert was born in Brooklyn, N.Y. on August 16, 1938. He was the oldest of 8 children raised in an Irish Catholic lower-middle income household. Robert and his brothers and sisters were educated in parochial schools where they received religious instruction in addition to their routine studies. After completing his grammar school education, Robert entered St. Francis Xavier H.S. of New York. There, he notes that his academic performance was below average. Upon graduation from high school in 1956 Robert entered Kings Point U.S. Merchant Marine Academy located in Great Neck, New York. My client remained there for three years. He resigned from the school and shortly thereafter, on 2/24/59, he married Julia Marie O'Connell. After approximately 13 years their marriage ended in divorce due to incompatibility. During this period of his life Robert worked as a merchant seaman, an investigator for the New York Stock Exchange, a salesman, waiter and bartender. It was not until his early 30's that my client became involved

in illegal activity. Prior to that time he was an honest hard working family man. A change in his behavior seemed to occur with his employment as a bartender. It appears that his contacts with unsavory characters were initiated during his working hours in the bars. According to his first wife, Julia O'Connell, her husband never drank alcoholic beverages prior to his employment at the various pubs. The last few years of their marriage parallels Robert's conflicts with the law. In 1971 Robert remarried. He now resides with his wife and her children from a previous marriage, in East Hampton, New York.

#### FAMILY COMPOSITION:

##### Wife:

My client's present wife informs that they were married in Montego Bay, Jamaica, West Indies on July 19, 1971. Mrs. Thomas had formerly been married to Robert Kohr, of New York City, but obtained a divorce in 1970 on the grounds of incompatibility. Three children resulted from this union. They are Robert, 15, Steven, 13, and Tracy, 12. All three reside with my client in East Hampton. At the time of the divorce, Mr. Kohr was ordered by the Court to pay \$75 per week for child support. According to Mrs. Thomas, he followed the Court's mandate until April, 1974 when he stated that he could no longer continue to make payments because he had



lost his job. Since that time my client has been responsible for the care and support of his wife's children. Tracy, the youngest, described her stépfáther as a hardworking man who has treated her like his own daughter.

Mrs. Thomas, the former Carol Dee, was born and raised in the Bronx. She was graduated from St. Clair's Academy and attended Albertus Magnus College for one year. In addition to the preceding, Mrs. Thomas has attended the N.Y.U. School of Merchandising and earned a degree from the N.Y. School of Interior Design. Mrs. Thomas spends the major portion of her day either caring for her children or in helping her husband run their fish store. It is her belief that since his 1974 incarceration in the Tombs (as a result of a conviction relating to his possession of a stolen 1973 Porsche automobile), his former immature attitudes have changed and he has altered his life style to conform with that of a normal family man. She further praised the diligence and hard work he has invested in his recent business ventures. Mrs. Thomas is plagued by the fear that during the period of incarceration which Robert now faces, she will be unable to continue to operate the businesses. With the children's help she could manage the store. But, she notes, for example, that in his work with the Eastern Seafood Company, it is essential that her husband make daily trips to the City in order to sell the fish and scallops which they have bought from the local fishermen.

If her husband is incarcerated for a lengthy period, it will be necessary for her to reapply for welfare assistance, as she did previously when he was in State custody.

Mrs. Thomas appears to be a warm hearted person who truly wants to help her husband remain a law-abiding citizen worthy of respect from peers, community and family.

#### Parents & Siblings:

My client's mother and father reside at 1193 E. 34th Street, Brooklyn, New York. Mr. Thomas, now in his late fifties, for a number of years operated his own fish business at the Fulton Market in Brooklyn. In recent years, he has worked as an independent painting contractor.

Robert's mother, the former Winnifred Taylor, held the full time job of housewife and mother of eight children. Since her children have grown and left the household, she has obtained a position with the New York Telephone Co. Robert described his parents as individuals who provided him with a good example of daily living along with the material necessities of life. Robert is the oldest of eight children. His siblings are: Elizabeth, age 34, who is married and the mother of three children. She resides in Princeton, N.J. Theodore, 32, is a "career-man" in the U.S. Air Force. He is married and the father of two children. John, 25, is married and resides in Brooklyn. He works as a T.V. camera-man in N.Y.C. Marianne, 22, is a cerebral palsy victim.



She resides with her parents in Brooklyn. Stephen, 21, attends N.Y.C. Community College and also lives at home. David and Brian, 19, are twins. David owns and operates a second hand store and lives with his parents. Brian is a seminarian whose eventual goal is to become a priest.

**Former Wife & Children:**

My client married the former Julia O'Connell on February 24, 1959. They had been acquainted for a number of years and had originally met as teenagers at their family's beach club. Four children have resulted from their union. They are: Christopher, 16, Owen, 14, Peter, 13, and Suzanne, 11. They all attend parochial schools and, according to both my client and his former wife, the oldest child, Christopher is an exceptional athlete who is being sought by several colleges. In retrospect Julia O'Connell described the first ten years of her marriage as stable and relatively free from marital strife. She states their differences surfaced during the last two years of the marriage. As to the major portion of their life together, Julia states her husband was a steady worker who, if for some reason was faced with unemployment, immediately sought and obtained another job. In addition to work and family related activities, Robert spent a great deal of time working with neighborhood youngsters. For four years he coached the Cummings Brothers

Post of the American Legion football team. It is also reported that Robert was known to have counseled his boys about the pitfalls of drug abuse and may have been influential in several youngsters decision to discontinue drug usage.

As to her financial circumstances, the former Mrs. Thomas indicated the following. She is an R.N. and serves as a night supervisor earning approximately \$19,000 yearly. She and her children reside at 38-10 Glenwood Road, Brooklyn in a home which she purchased in 1972. Currently she pays \$263 per month for mortgage and utilities. My client's former wife states that her income is adequate for the support of her family. She notes that Robert faithfully contributed to the support of his children when he worked and his income was adequate. She acknowledges that Robert's present marital circumstances and his related financial obligations make it difficult for him to make timely support payments.

#### Home & Neighborhood:

My client, his wife and her three children reside in a single family dwelling at 114 North Main Street, East Hampton, New York. The house which they rent for \$250 per month is adequately but not expensively furnished. They have resided here since Robert's release from custody. Mrs. Thomas indicates that she moved twice while her husband was incarcerated. In the first instance she moved because the house had been sold to



another party, and in the second instance the family moved to their present location in order to be near the fish store which is two houses away from their residence. It is our conclusion that these moves in no way would suggest family instability. Rather, the moves occurred as a practical result of circumstances which demanded such action.

#### EMPLOYMENT:

My client states he has worked at the following occupations:

1959 - 61	Merchant Seaman	Mobil Oil Co.	\$400 per mo.
1962 - 63	New York Stock Exchange New York City	Investigator	approximately \$14,000 yearly
1964	Bemis Bag Co. Court Street Brooklyn, N.Y.	Salesman	approximately \$6500 yearly

While employed at Bemis, Robert coached an American Legion football team. At this time he decided to return to college to obtain the credentials he needed to become a football coach. He obtained a job as a waiter and registered as a Pace College night student.

1965 - 66	Allens Restaurant 73rd St. & 3rd Ave. New York City	Waiter	approximately \$350 per week
-----------	---	--------	---------------------------------

As he was able to support his family comfortably on his earnings as a waiter, his interest in college waned and he stopped attending classes. From that point until sometime in 1971 my client worked at various waiter or bartender jobs. To the best of his recollection, they are as follows:

1966 - 71:

Tobo's Night Manager approximately  
 60th Street & \$175 per week  
 Madison Ave.  
 New York City  
 (approximately 6 months)

Tuxedo Club Ass't. Manager approximately  
 Tuxedo Park, N.Y. \$200 per week  
 (approximately 6 months)

For a seven month period in 1968 Robert states that he worked as a merchant seaman on a ship which transported a load of ammunition to Vietnam.

1969 Hobeau's Bartender approximately  
 963 1st Ave. \$400 per week  
 New York City  
 (approximately 6 months)

1970 - 71 Daly's Dandelion Bartender approximately  
 200 E. 61st St. \$400 per week  
 New York City

2/26/74 -  
 9/75

Incarcerated as the result of possession of a stolen 1973 Porsche automobile.

After his release from custody and while under N.Y. State parole supervision, Robert advised that he worked for two East Hampton firms:

Hard Scrabble Co. Painter approximately  
 Montauk Bay \$120 per week  
 East Hampton, N.Y.

Pat Trunzo Carpenter approximately  
 Railroad Ave. \$120 per week  
 East Hampton, N.Y.

3/75 -  
 present

East End Floor Owner & Manager  
 Service  
 P.O. Box 832  
 East Hampton, N.Y.

Since March, 1975 Robert advises he earned \$12,000 gross while operating the floor service.

8/75 -  
 Present

Eastern Seafood Co. Owner & Manager  
 N. Main Street  
 East Hampton, N.Y.



At present my client is unable to give an accurate account of his earnings as the capital which he used to invest has been provided by a local bank. He will be unable to do so until a proper accounting is made.

My client's first arrest occurred at age 32. It was for possession of stolen property and resulted in a dismissal. A subsequent conviction for possession of a forged instrument resulted in a \$500 fine. He became more deeply involved in illegal activities and subsequently was apprehended by local authorities in conjunction with possession of stolen motor vehicles. He was arrested and sentenced by the State court on February 26, 1974 to one year imprisonment for possession of stolen property (1973 Porsche). On February 28, 1974 he was sentenced to another year imprisonment (for possession of a deadly weapon): this one to run concurrent with the first.

After having been incarcerated but a few weeks, Robert sent two letters (see attached) to the Hon. Leonard Sandler and the Hon. Irving Lang, both justices of the State Supreme Court. Both letters are substantially the same and in them he related the following attitudes. Robert thanked the Court for the sentence which it had imposed. He further stated that he had been "trifling with authority for years" and most likely would have continued to do so had he not been apprehended and sentenced by the Court. My client concludes by saying that the Court has made him aware of certain truths which he believes will help him lead a better life. He further stated that he

intended to serve his sentence, return to his family and to make the effort necessary for a proper adjustment to society.

After his release from prison Robert served approximately one year of parole supervision. During this period he obtained two jobs, one as a painter and another as a carpenter. My client stated that he reported to his parole officer as instructed and that he abided by the conditions of his parole. After successfully completing parole my client started two businesses; the Eastern Seafood Co. and East End Floor Service. Since September, 1975 he has worked diligently to make both concerns grow and prosper. Presently, Robert resides with his wife and her three children at 114 North Main Street, East Hampton, New York.

#### RESOURCES:

As assets my client and his wife declare the following: a late model Chevrolet valued at no more than several hundred dollars, and simple household furnishings.

Their liabilities are as follows:

LOANS:	\$3500 for 3 years at \$80 per month
	\$3500 for 3 years at \$80 per month
	\$2500 for 3 years at \$80 per month (for new truck)
	\$2400 for 2 years at \$100 per month (remainder owed to James Taybor for purchase of Seafood store).
	\$2000 operating capital to buy scallops
	\$2000 - 90 day note at 8½% interest

According to my client he has received from his family



financial assistance which he used to pay for court related expenses. It is my client's belief that the local bank lent him the above sum of money with the knowledge of his legal difficulties. He interprets their willingness to loan him these funds as a testament to their belief that his business is viable and can succeed. If he is incarcerated for a lengthy period, it is obvious that the community and bank will suffer as a result of a default of payment on the loans.

**CONCLUSION:**

Your Honor, in addition to the preceding material also attached is a letter signed by numerous members of the East Hampton fishing community attesting to the fact that since my client has operated the Eastern Seafood Co. they have been able to secure a fair price for the merchandise which they sell to Robert. Prior to the establishment of his business the local fishermen were unable to effectively deal with the buyers who they felt placed strict controls on the prices. The number of signatures contained in the letter appears to be indicative of the feeling which Robert has been able to generate from his fellow businessmen. It is not likely that such a vote of confidence would be given to an individual who is considered to be a danger to the community. We in no way dispute the fairness of the sentence which has been imposed. What we do believe is that Robert's is an exceptional case and feel that upon reconsideration you will agree that the

interest of society will best be served by modification  
of your original sentence.

RESPECTFULLY SUBMITTED:

---

Herman Graber

Prepared by: J. Bright

/bt



Dec. 14, 1975

To whom it may concern:

We the undersigned are all residents of East Hampton township. We earn our livelihood by scalloping and commercial fishing. Since August, 1975, when Mr. Thomas began his fish business, we have been able to secure a fair price for our fish. Before Mr. Thomas entered the community, we were forced to deal with one or two buyers who limited our potential earnings by placing strict controls on the price of fish.

Since he has been in the business, the other buyers have been forced to compete with him, thus creating a better business atmosphere for us and the community, in general.

In dealing with him, we have found him to be a fair and honest person. In any business transaction, he has remained true to his word.

His absence from the community will cause us a financial hardship, as we feel the other buyers will return to their prior price-control ways. His ideas and plan for the local fishing industry will serve to enhance all those involved in local business.

As an example of the above, Mr. Thomas is willing to take a chance with us, and proves it by paying for our goods on delivery. In other words, we are never kept in suspense or cheated.

Whatever consideration you give this man will directly affect our businesses, families and lives.

Sincerely,

BEST COPY AVAILABLE

March 18, 1974

Honorable Irving Lang  
Justice of the Supreme Court  
60 Centre Street  
New York,  
New York 10013

Your Honor:

I am taking this opportunity to express my appreciation for the interest and consideration you have shown me. I am especially aware, after being inside these past three weeks, that my situation could be much worse.

During the months that I was appearing before you, I failed to grasp my precariousness and I viewed the circumstances with a certain amount of levity. It was only as time for sentence drew near that I began to realize that my days of trifling were behind me. I suddenly was aware of how much I stood to lose. For the first time in my life I knew real fear. And now, after only three weeks here, I know with absolute certainty that whatever I gained from any illegal activity was not worth it.

I imagine it is unusual for a man sentenced to time to express gratitude. The task you perform is not an easy one and it must weigh heavy on you. That is why I am writing you. You should know that as an instrument of the judicial system you have reached me. You have made me aware of certain truths that I feel will help me lead a better life. I intend to serve my time, go home to my family, and make the effort necessary to become the man I should be.

Thank you again.

Sincerely,

C. Robert Thomas  
774507  
1 Court Square  
Long Island City,  
New York 11101



March 18, 1974

Honorable Leonard Sandler  
Justice of the Supreme Court  
111 Centre Street  
New York,  
New York 10013

Your Honor:

I received notification today from Martin Schmukler of your sentence. I wish to take this opportunity to express my gratitude for your re-evaluation of my case. I am aware that it took special consideration and interest by yourself and Judge Lang. Please know that full use will be made of that consideration.

I am sure that it is not often a person sentenced to time is aware of the necessity of incarceration. In my case, I agree with the court. I have been trifling with authority for years and would probably have continued to do so. However, after only three weeks here, I am convinced that nothing is worth a jail sentence.

I intend to serve my time, return to my family and try to become the man I should have been all along.

Thank you again.

Sincerely,

C. Robert Thomas  
774507  
1 Court Square  
Long Island City,  
New York 11101

P L E A S E   N O T E

The minutes for the hearing of June 6th, 1976 were timely ordered however, the hospitalization of Michael Picozzi\*made it impossible to include them in this appendix. They will be made part of the record.

\* Mr. Picozzi is the court reporter.



MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT,  
EASTERN DISTRICT OF NEW YORK

-----X  
THE UNITED STATES

75-CR-316

v.

MEMORANDUM and ORDER

CHARLES ROBERT THOMAS

FEB 19 1976

-----X  
COSTANTINO, D.J.

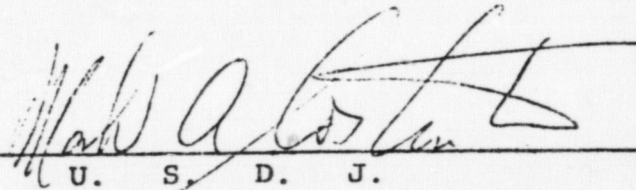
This is a Rule 35 motion for reduction of sentence. Petitioner pled guilty to six counts of conspiracy and transportation of stolen motor vehicles in interstate commerce (18 U.S.C. §§ 371, 2312). He was sentenced by this court on November 24, 1975 to serve concurrent three year sentences with 18 U.S.C. § 4208(a)(2) treatment.

This court has requested and received an updated probation report on the petitioner; the court has also examined counsel's objections to that report. It is concluded that no reduction of sentence by this court is warranted.

Petitioner is directed to present himself at the Marshal's office in this courthouse on February 23, 1976 by

3:00 p.m. to begin serving his sentence. No further delay  
will be granted.

So ordered.

  
U. S. D. J.



BAIL HEARING  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

75-CR-316

CHARLES ROBERT THOMAS, :

Defendant. :

-----X

United States Courthouse  
Brooklyn, New York  
March 1, 1976

**B e f o r e :**

HONORABLE MARK A. COSTANTINO, U.S.D.J.

MICHAEL PICOZZI  
OFFICIAL COURT REPORTER

1      **Appearances:**

2                    **DAVID G. TRAGER, ESQ.**  
3                    **United States Attorney**  
4                    **for the Eastern District of New York**

5                    **BY: EDWARD S. RUDOFISKY, ESQ.**  
6                    **Assistant United States Attorney**

7                    **MICHAEL STOKAMER, ESQ.**

8                    **-and-**

9                    **LYNNE I. STEWART, ESQ.**  
10                   **Attorneys for the Defendant**  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 THE CLERK: United States of America against  
2 Charles Robert Thomas.

3 MR. STOKAMER: Your Honor, I am admitted before  
4 this Court and I would like to introduce Lynne  
5 Stewart. Ms. Stewart is admitted to practice in New  
6 Jersey and also the District Court of New Jersey.  
7 With the Court's permission, I would like to have  
8 permission for her to argue this motion.

9 THE COURT: I don't know what motion you are  
10 arguing. This was a rule 35. There was a rule 35  
11 motion made and I denied it.

12 MR. STOKAMER: Could she be heard?

13 THE COURT: Of course, I will listen.

14 Do you represent the Government?

15 MR. RUDOPSKY: Yes.

16 THE COURT: Most of the time these are made  
17 ex parte. It's strictly within the discretion of  
18 the Court and no one else.

19 All right, let me hear.

20 MS. STEWART: There is decisional law that he  
21 may appeal --

22 THE COURT: I am not denying your right to  
23 appeal.

24 MS. STEWART: We are requesting bail pending  
25 this appeal and doing so under 18 USC 3148 and also

1 Rule 9(b) and (c).

2 Although a person is not entitled to bail, it  
3 can be granted.

4 THE COURT: Within the discretion of the Court.  
5 The Court feels that it has been more than under-  
6 standing and more than compassionate in this case.  
7 I have been more than sympathetic giving him every  
8 opportunity to convince this Court that the sentence  
9 should be reduced. I have listened to arguments for  
10 the Court. This Court determined that this man must  
11 start serving his sentence. He can appeal from the  
12 Rule 35.

13 MR. STOKAMER: May I be heard?

14 THE COURT: Of course.

15 MR. STOKAMER: Your Honor has in fact given this  
16 matter a lot of consideration and has been more than  
17 patient listening to applications. I think your  
18 Honor is aware that there are many, many arguments  
19 advanced on behalf of the defendant that are far from  
20 frivolous.

21 THE COURT: I never said any arguments were  
22 frivolous. I have accepted all the arguments. I have  
23 some within my discretion and have sentenced this man  
24 to what I think is a fair and reasonable sentence  
25 under the circumstances.



1 MR. STOKAMER: Exactly. What we ask now is  
2 your Honor give him the opportunity to be on bail  
3 pending his appellate remedies and if your Honor  
4 would like to hear from Ms. Stewart --

5 THE COURT: I will listen. I don't want to be  
6 accused of foreclosing anybody.

7 MS. STEWART: As your Honor undoubtedly knows,  
8 bail pending appeal may not be granted on four grounds:  
9 if there is a likelihood of flight; or danger to the  
10 community -- and obviously those are foreclosed  
11 because the defendant fits into neither of them.  
12 I don't think in this case we need to go into that.  
13 I don't think there is any proof of a likelihood of  
14 flight since his roots are very, very strong. As to  
15 his danger, your Honor admitted at one point that at  
16 best it was minimal.

17 I am not disregarding the question, which I  
18 think is most important, whether this is frivolous --

19 THE COURT: I have not alluded to that at all.  
20 That is not my word, you are saying that. After  
21 hearing all the argument I made a determination and  
22 denied the Rule 35 which I feel at this time must be  
23 denied. My sentence was fair, just, and reasonable  
24 under the circumstances of the crime that he committed,  
25 which he admitted he committed.

1 MS. STEWART: What we are raising is not what  
2 the Court said but perhaps the circumstances which  
3 led to that. We are not questioning your Honor's  
4 sentence which was fair. We would like to raise with  
5 the Court of Appeals the question of the circumstances  
6 of whether or not your Honor had the benefit of a  
7 fair probation report.

8 THE COURT: The defendant pleaded guilty.  
9 Sentencing is entirely within the Court's discretion.  
10 He could have received the maximum, which is --

11 MS. STEWART: Five years on the conspiracy and  
12 six on each of the substantive counts.

13 THE COURT: The ring, which he headed, stole  
14 numerous Porsche automobiles which incidentally I  
15 didn't think there were that many Porsche automobiles  
16 in the city of New York to be stolen. The Court gave  
17 a sentence of three years under such circumstances.  
18 The Court does not feel the sentence was unjust or  
19 unreasonable considering the great magnitude and  
20 amount of people deprived of their automobiles.

21 MS. STEWART: The indictment alleges only 27.

22 THE COURT: Only 27 cars? Twenty-seven cars  
23 are a lot of automobiles.

24 MS. STEWART: I couldn't agree with you more.  
25 But to say in a presentence report that he was supposed



1 to have stolen 200 --

2 THE COURT: I didn't take 200 into consideration.  
3 Twenty-seven was enough for me. Twenty-seven automo-  
4 biles was more than enough.

5 I feel that the sentence was fair. It was not  
6 arbitrary, I was not capricious at all under the  
7 circumstances. I used absolute discretion and gave  
8 him every opportunity for him to come in to see  
9 whether or not the Court would reduce the sentence and  
10 after taking all of the facts into consideration this  
11 Court maintains the sentence of this defendant was  
12 fair and a reasonable sentence.

13 If someone else wishes to substitute their  
14 judgment in place of mine, that is something else.  
15 But that is my judgment. I am not stern or difficult,  
16 I think I am a very reasonable man.

17 MS. STEWART: I think sentence is most  
18 difficult and it is not easily made. All we are saying  
19 is there were certain inputs in the sentencing that  
20 have been severely questioned and there is a multitude  
21 of cases in the Second Circuit where there have been  
22 problems. There is a problem on how to decide them.

23 Also in this case, perhaps it wasn't raised  
24 clearly, but there has been further research involving  
25 a double jeopardy problem. There are four counts in

1 the indictment that were directly <sup>related</sup> ~~researched~~ with  
2 cars that he has previously been prosecuted for.

3 THE COURT: That has nothing to do with a  
4 Rule 35 at this point.

5 MS. STEWART: Except double punishment.

6 THE COURT: The Court sentenced him on one  
7 count. Are you advising that I sentenced him on a  
8 double jeopardy count?

9 MS. STEWART: Technically speaking, I would  
10 say no, your Honor. But the problem is the whole  
11 prosecution was tainted.

12 THE COURT: You say the prosecution was tainted?

13 MS. STEWART: Yes.

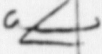
14 THE COURT: Then bring a 2255 if that is what  
15 you feel.

16 That should be the motion you bring, not 35.  
17 35 is an action merely requesting the Court to  
18 exercise greater judgment and discretion awarding  
19 this defendant with what he believes should be a  
20 lesser sentence.

21 Rule 2255 is something else. You may attack  
22 the indictment itself or the reasons for his plea.  
23 You may do that.

24 MS. STEWART: All that Mr. Thomas is asking  
25 for is your Honor to set bail pending appeal.



1 THE COURT: This Court will not set bail on   
2 Rule 35. He will start his sentence at this time.  
3 This morning. He has received tremendous latitude  
4 in remaining out of jail on these counts. Tremendous  
5 latitude.

6 The sentence was in the discretion of the  
7 Court. Under the circumstances it was neither  
8 arbitrary nor was it in violation of my discretion,  
9 nor did I fail to give him all of the considerations  
10 -- many more considerations than other defendants  
11 would have received, because of the nature of his  
12 business which he said was helping the community. I  
13 remember the whole case.


14 MS. STEWART: The point we are trying to make  
15 now is Mr. Thomas wants to pursue his appellate  
16 remedies.

17 THE COURT: I cannot deprive him nor will I  
18 try. But he will start his sentence this morning.

19 MS. STEWART: Are you saying his appeal is  
20 frivolous?

21 THE COURT: No, absolutely no. He has a right  
22 to appeal but he will start his sentence this morning.

23 MS. STEWART: May I ask for the grounds?

24 THE COURT: I have denied his Rule 35. 

25 MS. STEWART: Thank you, your Honor.

1 MR. RUDOFISKY: Thank you, your Honor.

2 THE DEFENDANT: Can I say goodbye?

3 THE COURT: Yes.

4 \* \* \*

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



INDICTMENT

A-59

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

Cx.No. 75 CR 316  
(T. 18, U.S.C., §371,  
§2312, §2313 and §2)

CHARLES ROBERT THOMAS III,  
WILLIAM AUGUST BARTH, also known  
as "Pinhead", also known as  
"Geofrey"

KURT ANDON,  
ROY WOLFE,  
JACK HUNTER,  
BRUCE BARTH,  
ROBERT FORTUNA,  
NED FINLEY,  
MERLE ANN TAYLOR,  
DAVID KORAL and  
LESLIE JOY,

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of January 1970,  
and the 31st day of October 1973, both dates being approximate  
and inclusive, within the Eastern District of New York and  
elsewhere, the defendants CHARLES ROBERT THOMAS III, WILLIAM  
AUGUST BARTH, also known as "Pinhead", also known as "Geofrey",  
KURT ANDON, ROY WOLFE, JACK HUNTER, BRUCE BARTH, ROBERT FORTUNA,  
NED FINLEY and MERLE ANN TAYLOR together with others to the  
Grand Jury known and unknown, did knowingly and intentionally  
combine, conspire, confederate and agree together and with each  
other to commit an offense against the United States, that is,  
to transport stolen motor vehicles in interstate commerce, the  
defendants then and there well knowing said motor vehicles to  
have been stolen, in violation of Section 2312 of Title 18,  
United States Code.

BEST COPY AVAILABLE

A-60

In furtherance of the conspiracy and to effect the objects thereof, the defendants performed the following overt acts:

O V E R T   A C T S

1. On or about October 8, 1972, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", and KURT ANDON stole a 1971 Silver Porsche automobile model 911T having a true vehicle identification number of 9111110816 in New York County, New York. On October 16, 1972, in the State of Rhode Island, CHARLES ROBERT THOMAS III, using a false name and address, applied for registration of this automobile within the State of Rhode Island Registry of Motor Vehicles. Between October 16, 1972 and December 31, 1972, in Queens, New York, BRUCE BARTH received a sum of money in payment for the sale of this same automobile.
2. On or about February 23, 1973, in New York County, New York, ROY WOLFE stole a 1972 Brown Porsche automobile model 911T having a true vehicle identification number of 9112100731.
3. On or about May 21, 1973, in Kings County, New York, JACK HUNTER sold a Brown 1970 Porsche automobile model 911E bearing the false vehicle identification number of 9110213893.
4. On or about or between January 1, 1973 and January 31, 1973, in Coconut Grove, Florida, ROBERT FORTUNA sold a 1971 ~~Porsche~~ che automobile bearing the false vehicle identification number of 9111112885.
5. On or about and between April 26, 1973 and May 30, 1973, in the State of New Jersey, NED FINLEY sold a maroon 1973 Porsche automobile bearing the false vehicle identification number of 9113112052.
6. On or about and between October 16, 1972 and November 30, 1972, MERLE ANN TAYLOR in Queens, New York, received a sum of money in payment for the sale of a 1969 Porsche automobile model 912 bearing the false vehicle identification number of 120010823. (Title 15, United States Code, §371).



COUNT TWO

On or about and between the 12th day of November 1970, and the 10th day of March 1971, the defendants WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and KURT ANDON did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1969 Maserati automobile, model Indy 400, whose original and true vehicle identification number was AM116432, between the State and Eastern District of New York and the State of Colorado, the defendants WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and KURT ANDON, then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT THREE

On or about and between the 22nd day of September 1971, and the 1st day of January 1972, the defendants CHARLES ROBERT THOMAS III and WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1970 Porsche automobile, model 911T whose original and true vehicle identification number was 9110121676, between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III and WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT FOUR

On or about and between the 17th day of October 1971, and the 31st day of December 1971, the defendants CHARLES ROBERT THOMAS III, DAVID KORAL and LESLIE JOY did knowingly and intentionally transport in interstate commerce a stolen motor

vehicle, that is a, 1971 Porsche automobile, model 911T whose original and true vehicle identification number was 9111112874, between the State and Eastern District of New York and the State of Pennsylvania, the defendants CHARLES ROBERT THOMAS III, DAVID KORAL and LESLIE JOY then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT FIVE

On or about and between the 19th day of December 1971 and the 31st day of January 1972, the defendants CHARLES ROBERT THOMAS III and WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1971 Porsche, model 911T whose original and true vehicle identification number was 9111121330, between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III and WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", then and there well knowing the said motor vehicle to have been stolen.

(Title 18, United States Code, §§2312 and 2).

COUNT SIX

On or about and between the 20th day of March 1972 and the 25th day of December 1972, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", ROBERT FORTUNA and KURT ANDON did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1971 Chevrolet automobile, model Ghibli whose original and true vehicle identification number was AM1151722, between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", ROBERT FORTUNA and KURT ANDON then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).



n-03  
COUNT SEVEN

On or about and between the 27th day of March 1972, and the 21st day of May 1973, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a 1970 Porsche automobile, model 911E whose original and true vehicle identification number was 9110210893, between the State and Eastern District of New York and the State of Vermont, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER then and there well knowing the said motor vehicle to have been stolen.

(Title 18, United States Code, §§2312 and 2).

COUNT EIGHT

On or about and between the 14th day of July 1972, and the 17th day of October 1972, the defendants CHARLES ROBERT THOMAS III and WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1972 Porsche automobile, model 911T whose original and true vehicle identification number was 9112110821 between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III and WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" then and there well knowing the said motor vehicle to have been stolen.

(Title 18, United States Code, §§2312 and 2).

COUNT NINE

On or about and between the 9th day of August 1972, and the 11th day of September 1972, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1971 Porsche automobile, model 911T whose original and true vehicle

identification number was 9111112856 between the State and Eastern District of New York and the State of Pennsylvania, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT TEN

On or about and between the 18th day of August 1972, and the 31st day of October 1972, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1972 BMW automobile, model 3.0 whose original and true vehicle identification number was 2250106 between the State and Eastern District of New York and the State of Pennsylvania, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT ELEVEN

On or about and between the 9th day of September 1972, and the 17th day of November 1972, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", BRUCE BARTH and MERLE ANN TAYLOR did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1969 Porsche automobile, model 912 whose original and true vehicle identification number was 129010328 between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", BRUCE BARTH and MERLE ANN TAYLOR then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).



COUNT TWELVE

On or about and between the 5th day of October 1972, and the 31st day of December 1972, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and BRUCE BARTH did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1972 Porsche automobile, model 911T whose original and true vehicle identification number was 9112110433 between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and BRUCE BARTH then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT THIRTEEN

On or about and between the 7th day of October 1972, and the 20th day of November 1972, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and BRUCE BARTH did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1971 Porsche automobile, model 911T whose original and true vehicle identification number was 9111121129 between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and BRUCE BARTH then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT FOURTEEN

On or about and between the 6th day of October 1972, and the 24th day of November 1972, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and BRUCE BARTH did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1971 Porsche automobile, model 911S whose original and true vehicle identification number was 9111310449 between the State and Eastern District of New York and the State of Colorado, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey" and BRUCE BARTH then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT FIFTEEN

On or about and between the 8th day of October 1972, and the 21st day of December 1972, the defendants CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", BRUCE BARTH and KURT ANDON did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1971 Porsche automobile, model 911T whose original and true vehicle identification number was 9111110016 between the State and Eastern District of New York and the State of Colorado, the defendant CHARLES ROBERT THOMAS III, WILLIAM AUGUST BARTH, also known as "Pinhead", also known as "Geofrey", BRUCE BARTH and KURT ANDON then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT SIXTEEN

On or about and between the 30th day of November 1972, and the 31st day of January 1973, the defendants CHARLES ROBERT THOMAS III and ROBERT FORTUNA did knowingly and intentionally



transport in interstate commerce a stolen motor vehicle, that is a, 1971 Porsche automobile, model 911T whose original and true vehicle identification number was 9111111708 between the State and Eastern District of New York and the State of Florida, the defendants CHARLES ROBERT THOMAS III and ROBERT FORTUNA then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, 552312 and 2).

COUNT SEVENTEEN

On or about and between the 4th day of December 1972, and the 8th day of February 1973, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1970 Porsche automobile, model 911E whose original and true vehicle identification number was 9110210931 between the State and Eastern District of New York and the State of Pennsylvania, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, 552312 and 2).

COUNT EIGHTEEN

On or about and between the 23rd day of February 1973, and the 3rd day of May 1973, the defendants CHARLES ROBERT THOMAS III and ROY WOLFE did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1972 Porsche automobile, model 911T whose original and true vehicle identification number was 9112100731 between the State and Eastern District of New York and the State of Pennsylvania, the defendants CHARLES ROBERT THOMAS III and ROY WOLFE then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, 552312 and 2).

COUNT NINETEEN

On or about and between the 24th day of February 1973, and the 18th day of April 1973, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1973 Porsche automobile, model 911T whose original and true vehicle identification number was 9113100334 between the State and Eastern District of New York and the State of Pennsylvania, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2312 and 2).

COUNT TWENTY

On or about and between the 1st day of March 1973, and the 10th day of May 1973, the defendants CHARLES ROBERT THOMAS III and ROY WOLFE did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1973 Porsche automobile, model 911T whose original and true vehicle identification number was 9113110028 between the State and Eastern District of New York and the State of New Jersey, the defendants CHARLES ROBERT THOMAS III and ROY WOLFE then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code §§2312 and 2).

COUNT TWENTY-ONE

On or about and between the 7th day of March 1973, and the 31st day of October 1973, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1973 Porsche automobile, model 911S whose original and true vehicle identification number was 9113300511, between the State and Eastern District of New York and the State of Vermont, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER then and there well knowing the said motor vehicle to have been stolen.  
(Title 18, United States Code, §§2312 and 2).



COUNT TWENTY-TWO

On or about and between the 18th day of April 1973, and the 4th day of May 1973, the defendants CHARLES ROBERT THOMAS III and NED FINLEY did knowingly and intentionally transport in interstate commerce a stolen motor vehicle, that is a, 1973 Porsche automobile, model 911T whose original and true vehicle identification number was 9113111052, between the State and Eastern District of New York and the State of New Jersey, the defendants CHARLES ROBERT THOMAS III and NED FINLEY then and there well knowing the said motor vehicle to have been stolen.

(Title 18, United States Code, §§2312 and 2).

COUNT TWENTY-THREE

On or about and between the 27th day of March 1972, and the 21st day of May 1973, within the Eastern District of New York, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a 1970 Porsche automobile, model 911E whose original and true vehicle identification number was 9110210393 which motor vehicle was part of, moving as and constituted interstate commerce between the State of New York and the State of Vermont, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER then and there well knowing said motor vehicle to have been stolen. (Title 18, United States Code, §§2313 and 2).

COUNT TWENTY-FOUR

On or about and between the 18th day of August 1972, and the 31st day of October 1972, within the Eastern District of New York, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a, 1972 ~~BMW~~ automobile, model 3.0, whose original and true vehicle identification number was 2250106 which motor vehicle was part of, moving as, and

constituted interstate commerce between the State of New York and the State of Pennsylvania, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2313, and 2).

COUNT TWENTY-FIVE

On or about and between the 30th day of November 1972, and the 31st day of January 1973, within the Eastern District of New York, the defendant CHARLES ROBERT THOMAS III and ROBERT FORTUNA did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a, 1971 Porsche automobile, model 911T, whose original and true vehicle identification number was 9111111708 which motor vehicle was part of, moving as, and constituted interstate commerce between the State of New York and the State of Florida, the defendants CHARLES ROBERT THOMAS III and ROBERT FORTUNA then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2313 and 2).

COUNT TWENTY-SIX

On or about and between the 23rd day of February 1973, and the 3rd day of May 1973, within the Eastern District of New York, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a, 1972 Porsche automobile, model 911T, whose original and true vehicle identification number was 9112100731 which motor vehicle was part of, moving as, and constituted interstate commerce between the State of New York and the State of Pennsylvania, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2313 and 2).



COUNT TWENTY-SEVEN

On or about and between the 24th day of February 1973, and the 18th day of April 1973, within the Eastern District of New York, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a, 1973 Porsche automobile, model 911T, whose original and true vehicle identification number was 9113100334 which motor vehicle was part of, moving as, and constituted interstate commerce between the State of New York and the State of Pennsylvania, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2313 and 2).

COUNT TWENTY-EIGHT

On or about and between the 1st day of March 1973, and the 10th day of May 1973, within the Eastern District of New York, the defendant CHARLES ROBERT THOMAS III did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a, 1973 Porsche automobile model 911T, whose original and true vehicle identification number was 9113110028 which motor vehicle was part of, moving as, and constituted interstate commerce between the State of New York and the State of New Jersey, the defendant CHARLES ROBERT THOMAS III then and there well knowing the said motor vehicle was stolen. (Title 18, United States Code, §§2313 and 2).

COUNT TWENTY-NINE

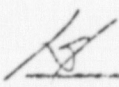
On or about and between the 7th day of March 1973, and the 31st day of October 1973, within the Eastern District of New York, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a, 1973 Porsche

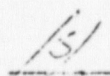
automobile, model 911S, whose original and true vehicle identification number was 9113300511 which motor vehicle was part of, moving as, and constituted interstate commerce between the State of New York and the State of Vermont, the defendants CHARLES ROBERT THOMAS III and JACK HUNTER then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2313 and 2).

COUNT THIRTY

On or about and between the 18th day of April 1973, and the 4th day of May 1973, within the Eastern District of New York, the defendant NED FINLEY did knowingly and intentionally sell and dispose of a stolen motor vehicle, that is a, 1973 Porsche automobile, model 911T, whose original and true vehicle identification number was 9113111052 which motor vehicle was part of, moving as, and constituted interstate commerce between the State of New York and the State of New Jersey, the defendant NED FINLEY then and there well knowing the said motor vehicle to have been stolen. (Title 18, United States Code, §§2313 and 2).

A TRUE BILL

  
\_\_\_\_\_  
FOREMAN

  
\_\_\_\_\_  
DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



STATE OF NEW YORK )

COUNTY OF NEW YORK )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 18 day of May 1977 deponent served the within Appendix upon:

U.S. Attorney  
Eastern District of New York

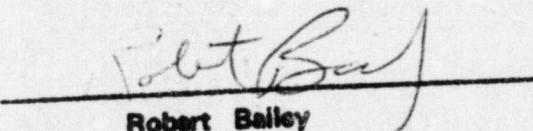
attorney(s) for

Appellee

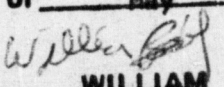
in this action, at

225 Cadman Plaza East  
Brooklyn, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing <sup>xxxxxxxxx</sup> 3 true copies, 1 true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
Robert Bailey

Sworn to before me, this 18  
day of May, 1977.

  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1977